56th St. Commons LLC v Parking 56 LLC
2022 NY Slip Op 32682(U)
August 9, 2022
Supreme Court, New York County
Docket Number: Index No. 160225/2020
Judge: William Perry
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. WILLIAM PERRY** **PART** **23**

Justice

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56TH STREET COMMONS LLC,

Plaintiff,

- v -

PARKING 56 LLC, XYZ CORP., JOHN DOE, JANE DOE

Defendant.

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INDEX NO. 160225/2020

MOTION DATE 07/23/2021

MOTION SEQ. NO. 001 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 38

were read on this motion to/for INTERIM RELIEF.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 72

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff owns a commercial garage condominium unit[1] located at 33 West 56th Street in Manhattan. The November 20, 2020, complaint in this action (NYSCEF Doc. No. 17) states that defendant signed a three-year lease for the premises on May 1, 2018, at a monthly base rent of $22,968.75 (*see* NYSCEF Doc. No. 18). Defendant also was required to maintain a $45,937.50 security deposit. Defendant stopped paying rent under the lease in March 2020, at the onset of the Covid-19 pandemic. Plaintiff sent defendant two notices to cure the default, on October 12, 2020, and October 28, 2020, respectively (*see id.* at **14-16 [exhibit A, first notice to cure]; *19-21 [exhibit B, second notice to cure]).[2] The second notice gave defendant until November 11, 2020, to cure the default and avoid litigation. Defendant did not respond to plaintiff's notices

[1] The unit consists of the entire garage.

[2] Plaintiff also sent defendant a notice to replenish on September 30, 2020, after plaintiff applied defendant's security deposit to the deficiency (NYSCEF Doc. No. 54).

to cure. On November 12, 2020, plaintiff sent defendant a notice of its intent to institute removal proceedings on November 18, 2020 (*id.*, **26-28 [exhibit C]). The complaint states that after November 18, 2020, defendant became a holdover tenant and is liable for two months' rent for each holdover month (*id.*, ¶¶ 39-46 [citing NYSCEF Doc. No. 18 (Lease), ¶ 21]). Plaintiff also alleges that defendant owes late charges for the period between March 1, 2020, and November 18, 2020.

BACKGROUND

The complaint sets forth four causes of action. The first cause of action seeks a declaration that plaintiff is entitled to immediate possession of the garage and defendant's ejectment from the premises. In the second cause of action, plaintiff seeks the recovery of defendant's unpaid rent and the additional fixed rent during the term of the lease. In the third cause of action, plaintiff seeks holdover use and occupancy for the period after the lease's expiration. The fourth cause of action seeks attorney's fees.

Defendant's answer contains a general denial along with 16 affirmative defenses and 3 counterclaims. The affirmative defenses are: 1) Force Majeure; 2) Impossibility; 3) Impracticability; 4) Frustration of Purpose; 5) Equity; 6) Unclean Hands; 7) Incorrect Venue; 8) Failure of Consideration; 9) Failure to State a Cause of Action; 10) Improper Splitting of Causes of Action; 11) Prior Action Pending; 12) Equitable Defense; 13) Breach of Covenant of Good Faith and Fair Dealing that is Implied in Contract; 14) Violation of New York City Administrative Code; 15) Violation of NYS Executive Orders and of New York City Administrative Code; and 15) Stay of this Action[3]. The counterclaims are: 1) Declaratory Judgment; 2) Commercial Tenant Harassment; and 3) Constructive Eviction. In the affirmative

[3] There are two "fifteenth" affirmative defenses.

defenses defendant alleges that during the pandemic its earnings were substantially reduced. The tenth and eleventh affirmative defenses allege that plaintiff brought a separate action against Ronald Massie, a part owner of defendant, for the same relief (*56th St. Commons LLC v Massie*, index No 159801/2020, Love, J. [*56th St. Commons*]; *see* NYSCEF Doc. No. 25, ¶¶ 17-22). For other claims and defenses, defendant relies on the Administrative Code and Executive Orders claiming that the eviction of commercial tenants that operate nonessential businesses is precluded.

1. The Motions.

Plaintiff filed motion sequence number 001 by order to show cause on February 4, 2021. In the application, plaintiff sought an order that directed defendant to pay use and occupancy for the commercial garage condominium located at 33 West 56th Street (the premises). Defendant opposed the motion and cross-moved for summary judgment dismissing the action.

Shortly after the papers in motion sequence number 001 were submitted and pending, two orders were issued. The Covid-19 Protect Our Small Businesses Act of 2021 (L 2021, c 73) stayed all commercial eviction proceedings between March 9, 2021, and May 8, 2021, and the Chief Administrative Judge's order AO 96/21 stayed all commercial eviction proceedings from March 15, 2021, to May 1, 2021. After May 8, 2021, defendant could have sought an extension of the stay by filing a declaration of hardship. As defendant did not do so, the stay in this case ended on May 8, 2021. Accordingly, in July 2021, plaintiff filed motion sequence number 004, for summary judgment. As motion sequence number 004 requests summary judgment, this renders the interim application for use and occupancy in motion sequence number 001 moot.

All papers for motion sequence number 004 were submitted by August 4, 2021. Defendant did not file opposition papers.[4] In a letter dated February 18, 2022 – over six months after the submission of the motion – defendant's new counsel wrote and requested that motion sequence number 004 be reopened so that defendant could file opposing papers. The court did not grant this letter application. Further, the letter is not part of the motion file. Defendant's earlier papers, moreover, set forth arguments for relief that are applicable to plaintiff's application for summary judgment. Therefore, the court consolidates the two motions for disposition and considers all pertinent documents.

2. Contentions.

Plaintiff argues that ejectment is an appropriate remedy. In support of its motions, plaintiff submits two affidavits from Manouchehr Malekan, one of its members (NYSCEF Doc. Nos. 16, 48). Malekan points out that defendant continues to rent garage spaces and he contends that the garage is at full capacity. Therefore, he states, defendant has "obtain[ed] a financial windfall" by its refusal to pay any rent (NYSCEF Doc. No. 16, ¶ 27).[5] Malekan notes that, pursuant to paragraph 6 of the lease, defendant was required to surrender the premises at the end of the term. According to plaintiff, the term ended when plaintiff commenced the eviction proceeding. He cites paragraph 21 of the lease, which states that if defendant remains on the premises after the lease's expiration date, it shall be liable for the current market value of the space thereafter, and that this amount will be at least twice the base rent under the original lease. He notes that paragraph 22 provides for late charges, which totaled $9,132.83 on July 23, 2021,

[4] However, defendant's counsel did indicate that he was withdrawing as counsel, and he requested that the court stay the lawsuit pending substitution (NYSCEF Doc. No. 60).
[5] Plaintiff also submits a memorandum of law that cites Real Property Law § 220, which provides for use and occupancy, and cites numerous cases that apply this law when a tenant holds over on a terminated lease (NYSCEF Doc. No. 19).

the date of the second affidavit. Also as of July 31, 2021, he states, the arrears through the termination of the lease totaled $162,370.62, and the holdover rent was $367,500.00 ((*see* NYSCEF Doc. No. 48, ¶¶ 27-30).

As relief, plaintiff seeks (1) a declaration that plaintiff shall have immediate possession of the premises, the issuance of a warrant of eviction, and a direction to the sheriff or marshal of New York County to eject defendant, (2) a money judgment and continuing use and occupancy, or, alternatively, a hearing on damages, and (3) an award of legal fees or a hearing on the appropriate amount of legal fees. It contends that summary judgment is proper on the issue of ejectment. According to plaintiff, the Malekan affidavit and the documents it has submitted satisfy its burden of proof under CPLR § 3212 (a). Specifically, plaintiff states that its evidence establishes that it owns the property, that the lease terminated when it commenced this action in November 2020, and that defendant remains on the premises without plaintiff's permission. Plaintiff also contends that defendant's affirmative defenses and counterclaims lack merit.

As stated, defendant has cross moved for an order of summary judgment dismissing the complaint. Alternatively, it seeks a referral of this matter to mediation or to a referee to compute the damages (NYSCEF Doc. No. 24). It states that the Covid epidemic frustrated its performance of the contract, and therefore dismissal is warranted (citing, inter alia, *Crown IT Servs., Inc. v Koval-Olsen*, 11 AD3d 263, 265 [1st Dept 2004]). In support, it provides a typed spreadsheet that purportedly proves that defendant's total revenue dropped from $273,983.65 to $78,909.93 between September 2019 to February 2020 and March 2020 to August 2020 (NYSCEF Doc. No. 31). Defendant also alleges that the City Controller stated that businesses like the one at hand, which are near Trump Tower, have shown a significant decline in revenue (NYSCEF Doc. No.

25 [Ronald Massie Affidavit], ¶ 16).[6] Defendant argues that impossibility excuses its performance of the contract (citing *Kel Kim Corp. v Central Mkts.*, 70 NY2d 900, 902 [1987]).

Defendant states that plaintiff commenced a separate lawsuit against the guarantor, and that this constitutes an impermissible splitting of the case. It quotes *Century Factors v New Plan Realty Corp.* (41 NY2d 1040, 1040-1041 [1977]), which states that a plaintiff must "assert its full claim in one action" and that the "[f]ailure to do so results in the splitting of a cause of action which is prohibited" (internal quotation marks and citation omitted). According to defendant, plaintiff has split a single cause of action between the two cases, as both cases involve the same plaintiff and arise out of the same commercial lease dispute. Therefore, defendant contends that this action must be dismissed.

Finally, defendant requests alternative relief due to equitable considerations. It maintains that should the court reject its arguments for dismissal, the court should refer this matter to mandatory mediation. Alternatively, if the court does not schedule mediation, defendant seeks referral of the matter to a referee to determine the amount of use and occupancy.

Plaintiff opposes the cross-motion and seeks dismissal of the affirmative defenses and counterclaims. Plaintiff argues that the first affirmative defense, force majeure, fails because there is no force majeure clause in the lease.[7] According to plaintiff, the second and third affirmative defenses, for impossibility and impracticability, lack merit because the garage remained open throughout the pandemic – and, in more recent months, operated at full capacity. Plaintiff maintains that due to the narrow scope of these doctrines (citing *Kel Kim Corp.*, 70 NY2d at 902), financial hardship due to Covid-19 is not a valid excuse (citing *407 E. 61st*

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[6] Defendant does not annex a copy of the report or of any other evidentiary support for this statement.
[7] Plaintiff also cites *Reade v Stoneybrook Realty, LLC* (63 AD3d 433, 434 [1st Dept 2009]), which states that *force majeure* clauses are narrowly construed. In the absence of such a clause, however, the court rejects this contention.

Garage v Savoy Fifth Ave. Corp., 23 NY2d 275, 281 [1968]). The fourth affirmative defense is for frustration of purpose, and plaintiff alleges that this defense is inapplicable because, among other things, defendant's performance was not completely frustrated (citing *558 Seventh Ave. Corp. v Times Sq. Photo, Inc.*, 194 AD3d 561, 561-562 [1st Dept 2021] [*558 Seventh Ave*]). Further, plaintiff argues that the governmental order was foreseeable, and defendant could have sought pandemic-related protection (citing *Warner v Kaplan*, 71 AD3d 1, 6 [1st Dept 2009]). Plaintiff also notes that garages were deemed part of the transportation infrastructure and they were not shut down by the government's order (citing esd.ny.gov/guidance-executive-order-2026). Therefore, too, plaintiff contends that defendant's fifth affirmative defense, which relies on the State-ordered closures of non-essential businesses and its stay-at-home directives, has no merit.

Next, plaintiff contends that the sixth affirmative defense, which asserts unclean hands, must be dismissed. Plaintiff also claims that New York County is not an improper venue for the action, and thus the seventh affirmative defense should be dismissed.

Next, plaintiff states that the tenth and eleventh affirmative defenses lack merit. These defenses, for improper splitting of the causes of action and for a prior action pending, respectively, are based on the existence of the *56th St. Commons* case against Massie, who guaranteed the lease. Plaintiff argues that there is no splitting here because it brought all its claims against defendant in this action (citing *Murray, Hollander, Sullivan & Bass v HEM Research*, 111 AD2d 63, 66 [1st Dept 1985] [setting forth elements of the claim]). The other action, against Massie, is based on a separate agreement – the guarantee – and involves a different defendant.

The twelfth affirmative defense asks the court to exercise its equitable powers to create a fair solution to the parties' dispute because of the harm defendant has sustained due to the pandemic. Plaintiff alleges that the claim is conclusory. It also challenges defendant's contention that it has suffered, noting that the garage remained open and defendant paid no rent. This argument also applies to defendant's thirteenth affirmative defense.

In addition, plaintiff objects to defendant's fourteenth affirmative defense, which states that plaintiff violated New York City Administrative Code (Admin Code) § 22-1005. That provision precludes enforcement of personal guarantees in leases if 1) the business was closed under executive order number 202.7, or the tenant was a non-essential retail establishment; and 2) the default occurred between March 7, 2020, and June 30, 2021. Defendant was an essential business. Plaintiff also challenges defendant's second fifteenth affirmative defense as inapplicable and not grounded in the law. It alleges, generally, that defendant has not presented any facts that support its seventh, eighth, ninth, thirteenth, and the first of its fifteenth affirmative defenses.

Plaintiff also challenges defendant's counterclaims. The first counterclaim alleges that defendant is not in default under the lease, and plaintiff points out that defendant has not paid rent although this is a requirement under the lease. The second counterclaim, which asserts commercial tenant harassment under Admin Code § 22-902, plaintiff states, is inapplicable because plaintiff lawfully commenced a termination proceeding. Plaintiff states that defendant's third counterclaim, which alleges constructive eviction, lacks merit because defendant was not deprived of the use of the premises.

ANALYSIS

"To prevail on a cause of action for ejectment, a plaintiff must establish that (1) it is the owner of an estate in tangible real property, (2) with a present or immediate right to possession thereof, and (3) the defendant is in present possession of the estate" (*City of New York v Prudenti's Rest. on the Riv., Inc.*, 203 AD3d 1127, 1127 [2d Dept 2022] [internal quotation marks and citation omitted]). Here, it is uncontested that plaintiff owns the garage and defendant is currently in possession. Defendant only disputes that plaintiff has satisfied the second prong of the test.

Plaintiff has the right to immediate possession of the garage (*Knickerbocker Retail LLC v Bruckner Forever Young Social Adult Day Care Inc.*, 204 AD3d 536, 537 [1st Dept 2022] [landlord entitled to ejectment where tenant stopped paying rent in March 2020 and received but did not comply with plaintiff's notice of termination]). Defendant does not challenge that it has not paid rent since March 2020. Instead, it argues that the pandemic has relieved it of the obligation to pay any rent since the onset of the pandemic (*see Arista Dev., LLC v Clearmind Holdings, LLC*, - AD3d -, 2022 NY Slip Op 04451, *1 [4th Dept 2022]).

Defendant's argument is not supported by the record or the caselaw it relies upon. Further, its affirmative defenses and counterclaims lack merit. Where there is no force majeure clause, the "Court may not add or imply such a clause" (*Fives 160th, LLC v Qing Zhao*, 204 AD3d 439, 440 [1st Dept 2022] [*Fives 160th*]). Also, the pandemic cannot serve to excuse a party's lease obligations on the grounds of frustration of purpose or impossibility" (*id.*). The defense of impossibility applies "only when the destruction of the subject matter of the contract or the means of performance makes performance objectively impossible" (*Gap, Inc. v 44-45 Broadway Leasing Co. LLC*, -- AD3d --, --, 2022 NY Slip Op 03980, *1 [1st Dept 2022] [*The Gap*] [internal quotation marks and citation omitted]). This is especially true where, as here, "the

purpose of the lease . . . was not frustrated, and defendant['s] performance was not rendered impossible, by its reduced revenues (*558 Seventh Ave*, 194 AD3d 561 at 562). The lease in question commenced on May 1, 2018, and therefore defendant enjoyed full use of the garage for almost two years (*see Gap, Inc. v 170 Broadway Retail Owner, LLC*, 195 AD3d 575, 577 [1st Dept 2021] [*170 Broadway Retail*]). Thus, the court dismisses the first three affirmative defenses.

The court finds that the fourth affirmative defense, alleging frustration of purpose, lacks merit. "[T]he pandemic cannot serve to excuse a party's lease obligations on the grounds of frustration of purpose . . ." (*see Fives 160th*, 204 AD3d at 440). This is because, as with the defense of impossibility, the doctrine "does not apply as a matter of law where, as here, the tenant was not completely deprived of the benefit of the bargain" (*170 Broadway Retail*, 195 AD3d at 577 [internal quotation marks and citation omitted]). The fact that the garage was less profitable during the pandemic does not support the fourth affirmative defense which is unavailing on this record (*see Fives*, 204 AD3d at 440).

The court rejects defendant's request for court-mandated mediation or other equitable relief, which it sets forth as its fifth and twelfth affirmative defenses. Defendant provides no basis for the relief. Further, plaintiff adamantly objects to the request. It points out that defendant has not paid any portion of the amount it owes to plaintiff under the lease, despite plaintiff's demands and this litigation, and despite the fact defendant's garage has been open throughout the period in question.[8]

The sixth affirmative defense lacks merit because, as plaintiff notes, its failure to warn defendant, a commercial enterprise, that the garage was near Trump Tower is not "immoral or

[8] Defendant could have reached out at any time to mediate or otherwise resolve the dispute out of court, and it remains free to make a settlement offer.

unconscionable conduct directly related to the subject matter at issue" (*C & A 483 Broadway LLC v KLMNI Inc.*, 48 Misc 3d 1209 [A], 2015 NY Slip Op 51015 [U], *2 [Civ Ct, NY County 2015]). Further, plaintiff's "reliance on its contractual right to terminate the Lease does not constitute unclean hands" (*id.*).

Defendant's seventh affirmative defense also lacks merit. As plaintiff noted, New York County is a proper venue for this action as the garage is located here. To the extent that defendant meant to refer to this court's jurisdiction to entertain the lawsuit, the supreme court has general jurisdiction over this matter (*see 558 Seventh Ave*, 194 AD3d at 561). The eighth and ninth affirmative defenses assert lack of consideration and failure to state a claim, respectively, but there is no basis for these allegations. As plaintiff notes, the conclusory statements are insufficient to support these two affirmative defenses (*see Countrywide Home Loans Servicing, L.P. v Vorobyov*, 188 AD3d 803, 805 [2d Dept 2020] [*Countrywide*]). Moreover, "the failure of consideration argument fails for the same reasons that the frustration of purpose and impossibility arguments fail" (*Valentino U.S.A., Inc. v 693 Fifth Owner LLC*, 203 AD3d 480, 480-481 [1st Dept 2022] [*Valentino*]).

The court also concludes that, contrary to defendant's contention, there is no improper claim-splitting. "The lease and the guarantee are two separate contracts" (*APF 286 Mad LLC v Chittur & Assoc. P.C.*, 132 AD3d 610, 610 [1st Dept 2015] [APF]). The eviction proceeding was brought under the lease and against defendant, and the *56th St. Common* was brought under the guaranty and against the guarantor (*see id.*). As "the liabilities or claims alleged in the two actions arise from different sources, instruments, or agreements, the claim splitting doctrine does not apply" (*Melcher v Greenberg Traurig LLP*, 135 AD3d 547, 553 [1st Dept 2016]). Thus, the tenth and eleventh affirmative defenses are dismissed.

Defendant's thirteenth affirmative defense must be dismissed. Defendant merely states a breach of the covenant of good faith and fair dealing in a conclusory fashion and as such the thirteenth affirmative defense lacks merit (*see Countrywide*, 188 AD3d at 805). To the extent defendant relies on plaintiff's attempts to collect rent, moreover, the court has already rejected this argument as it lacks merit. Further, as plaintiff correctly notes, the closure orders upon which defendant relies simply did not apply to defendant, which was deemed an essential business and remained open during the pandemic (esd.ny.gov/guidance-executive-order-2026). Thus, defendant's fourteenth and the first of its fifteenth affirmative defenses must be dismissed.[9] The stay of eviction proceedings has been lifted by the Court, and thus the second fifteenth affirmative defense is dismissed.

Finally, the counterclaims also lack merit. For the reasons this court has discussed, the defendant is in default under the lease due to its failure to pay rent. The second counterclaim, for commercial tenant harassment, lacks merit because under Admin Code § 22-902 (a) (14), commercial tenant harassment is

> "'any act or omission by or on behalf of a landlord that (i) would reasonably cause a commercial tenant to vacate covered property, or to surrender or waive any rights under a lease or other rental agreement or under applicable law in relation to such covered property, and (ii) includes ... attempting to enforce a personal liability provision that the landlord knows or reasonably should know is not enforceable pursuant to section 22-1005 of the [administrative] code'" (*45-47-49 Eighth Ave. LLC v Conti*, 72 Misc 3d 1210 [A], 2021 NY Slip Op 50691 [U], *7 [Sup Ct, NY County 2021] [quoting Amin Code § 22-902 (a) (14)]).

This claim has been dismissed in the context of pandemic-related litigations (*e.g., id.*). Further, as plaintiff notes, it commenced a legitimate ejectment litigation, which is not grounds for a claim of harassment (*see* Admin Code § 22-902 [a] [5] [harassment would require repeated

[9] In addition, the fourteenth affirmative defense refers to guarantees rather than leases.

and frivolous court proceedings against the tenant]). The third counterclaim, asserting constructive eviction, is inapplicable because defendant remained in possession of the garage (*see International Dev. Inst., Inc. v Westchester Plaza, LLC*, 194 AD3d 411, 413 [1st Dept 2021]). Defendant does not allege that there was a specific wrongful act by plaintiff that made it impossible for defendant to use the garage (*see Valentino*, 203 AD3d at 481). Indeed, defendant was able to use the space even during the closure of nonessential businesses (*see id.*).

Plaintiff has established its right to relief and defendant has not established any viable defenses or counterclaims. The court notes that plaintiff also has shown its right to recover damages for use and occupancy (*see Noamex, Inc. v Domsey Worldwide, Ltd.*, 192 AD3d 817, 819 [2d Dept 2021]). Therefore, plaintiff's motion for summary judgment is granted. Further, the court awards possession to plaintiff. However, the court does agree with defendant that, rather than order a money judgment on plaintiff's second through fourth claims for relief, the court should refer this matter to a referee for a hearing on the amount of rent due plus attorney's fees. The court notes that, as plaintiff contends, the termination date is November 18, 2020 (*see First Natl. Stores v Yellowstone Shopping Ctr.*, 21 NY2d 630 [1968]). After that date, defendant was a holdover tenant for the purpose of calculating damages (*see Cearley v Eli Haddad Corp.*, 98 AD2d 622 [1st Dept 1983]).

Accordingly, it is

ORDERED that the branch of plaintiff's motion which seeks a declaratory judgment is granted, and it is

ADJUDGED and DECLARED that plaintiff is entitled to immediate possession of the garage located at 33 West 56th Street, New York, New York (the garage) as against defendant; and it is further

ADJUDGED that the Sheriff of the City of New York, County of New York, upon receipt of a certified copy of this Order and Judgment and payment of proper fees, is directed to place plaintiff in possession according; and it is further

ADJUDGED that immediately upon entry of this Order and Judgment, plaintiff may exercise all acts of ownership and possession of the garage, including entry thereto, as against defendant; and it is

ORDERED that the portion of the motion seeking a money judgment as to unpaid rent and use and occupancy, and the portion of the motion seeking attorney's fees are granted to the extent of awarding summary judgment on liability and directing a hearing on the amounts due; and it is further

ORDERED that the balance of the above-entitled action relating to recovery of damages and attorney's fees is severed and continued; and it is further

ORDERED that counsel is directed to appear in Room 543, Part 23, 60 Centre Street, New York, New York, on September 22, 2022, at 10:00 AM for a hearing on the amounts due to plaintiff, unless the parties stipulate in writing within 30 days to the damages and attorney's fees due and owing to plaintiff in accordance with this court's decision and order.

8/9/2022
DATE

WILLIAM PERRY, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	☐ DENIED		GRANTED IN PART	☐	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	☐	REFERENCE